CHAPTER 4

Environmental Consultation, Review, and Permit Requirements

A number of Federal environmental laws and administrative requirements must be satisfied by the proposed project. This chapter provides a summary of these requirements and discusses their applicability to the project. Requirements of the state of Oregon must be satisfied; they are not described in detail in this chapter but are listed in the final section.

4.1 National Environmental Policy Act

This document contains information necessary for preparation of an EIS pursuant to regulations implementing the National Environmental Policy Act (42 USC §4321 et seq.), which requires Federal agencies to assess the impacts that their actions may have on the environment. BPA's potential transmission of power from the COB Energy Facility requires BPA to assess the potential environmental effects of the proposed project and describe them in an EIS. Decisions would be based on an understanding of the proposed project's potential environmental consequences and the actions that would be taken to protect, restore, and enhance the environment.

The Bureau of Land Management, which manages property where an easement would be provided, is a cooperating agency in the NEPA process.

4.2 Endangered and Threatened Species and Critical Habitat

The Endangered Species Act of 1973, as amended (16 USC §1536 et seq.), requires Federal agencies to ensure that their actions do not jeopardize endangered or threatened species or their critical habitats. Sources of information for the potential occurrence of sensitive species in an area include both Federal and state lists.

Consultation letters were sent to the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) to identify Federal species of concern. The Oregon Natural Heritage Program (ONHP) was queried for information on listed and sensitive species. The ODA was contacted for information about protection and conservation programs. The following species has been known to occur or potentially occur within the project area, based on habitat suitability and information received from the USFWS and ONHP.

Bald eagle (*Haliaeetus leucocephalus*)—threatened in Oregon and the U.S.

Potential impacts of the proposed project on the listed species are discussed in Sections 3.4 and 3.5. BPA and BLM have an obligation under Section 7 of the ESA to consult with USFWS concerning these potential impacts. Accordingly, a biological assessment has been prepared and included in this Draft EIS as Appendix C.

4.3 Fish and Wildlife Conservation

The Fish and Wildlife Conservation Act of 1980 (16 USC §2901 et seq.) encourages Federal agencies to conserve and promote conservation of nongame fish and wildlife species and their habitats. Water resources that promote fish and wildlife habitat would not be impacted by the Energy Facility.

4.4 Heritage Conservation

The National Historic Preservation Act of 1966, as amended (16 USC §470 et seq.), requires BPA to take into account the potential effects of its undertakings on properties that are eligible for nomination to the National Register of Historic Places (NRHP). BPA must consult the State Historic Preservation Office regarding the inventory and evaluation of properties potentially eligible for National Register nomination and to determine whether the undertaking would adversely affect them. An archival search and field survey were conducted. No resources were listed on the NRHP or with SHPO. During the field survey, however, two archaeological resources and one cultural resource were found. The *Cultural Resources Technical Report* was prepared for the SCA in cooperation with The Klamath Tribes to document the results of the field survey and the history of the area (CH2M HILL, 2003).

BPA is required to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on the proposed project. The ACHP published implementing regulations for Section 106 of the NHPA at 36 CFR 800. Federal agencies follow 36 CFR 800 to fulfill the cultural resource coordination and compliance process. These include step-by-step procedures for the entire coordination process (including steps for conducting government-to-government consultations with Indian Tribes), from initial identification of a resource, through its evaluation, and to final mitigation, if required. BPA would conduct government-to-government consultations with The Klamath Tribes.

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 USC §3001 et seq.) assigns ownership of Native American graves found on Federal land to Native Americans. It requires the Federal agency managing land on which the grave was found to consult with the most likely descendent of the buried person or with a culturally related person regarding the disposition of the remains.

The electric transmission line crosses lands owned and managed by the Bureau of Land Management. Any Native American graves found in this segment would be subject to the NAGPRA.

4.5 State, Areawide, and Local Plan and Program Consistency

4.5.1 Land Use

The Energy Facility would be located in Klamath County. The Klamath County Land Development Code (LDC) and the Klamath County Comprehensive Plan (KCCP) govern development in the project area.

The proposed Facility would alter land use at the Energy Facility site from fallow fields to a utility use. The Energy Facility site is zoned for EFU and has a Significant Resource Overlay, which includes high-density deer winter range and medium-density deer winter range. The electric transmission line route would alter land uses from primarily rangeland and forested land to utility use. The electric transmission line is zoned for EFU, FR, and FU. The natural gas pipeline would be constructed below the surface of the lands zoned for EFU, FU , and industrial use. The water supply pipeline would be constructed below areas used for agriculture, pasture, rangeland, and fallow fields. The water supply well would be constructed on land used as pasture and zoned as EFU.

The Energy Facility would comply with applicable local and state land use regulations, except that it would exceed the acreage conversion limits for high-value soil and commercial forest land found in Goals 3 and 4, respectively, of the KCCP. The Energy Facility would be considered a conditional use by Klamath County.

4.5.2 Notice to the Federal Aviation Administration (FAA)

Construction of any facility 200 feet (61 meters) or taller above ground level requires that notice be given to the FAA. The stacks proposed at the proposed Energy Facility would be less than 200 feet tall.

Additionally, proximity of a facility to an airport requires that notice be given to the FAA. The closest public airport to the Energy Facility would be Klamath Falls International Airport, located approximately 30 miles west of the site. A small, private airport (Juniper Hills Airport) is located approximately 5 miles southwest of the Energy Facility site.

4.5.3 Construction-Related Permits

Grading, building, and related permits would be required from Klamath County. In addition to requiring the proper building permits, the County also requires developers to complete the following activities prior to construction:

- Obtain land use approvals from Klamath County.
- Establish fire suppression and hazardous material safety designs in consultation with the Bonanza Rural Fire Protection District and the State Fire Marshal.
- Have the Energy Facility design reviewed by the Oregon Building Codes Agency for code compliance.

4.6 Coastal Zone Management Program Consistency

The Energy Facility would not be located in a coastal zone, and it would not affect any such zone.

4.7 Floodplains

The Energy Facility would not cause the placement of structures or fill within federally designated floodplains.

4.8 Wetlands

Information on wetlands was obtained from review of U.S. Geological Survey (USGS) 7.5-minute quadrangles, aerial photographs, National Wetland Inventory (NWI) maps, and soil maps for Klamath County, Oregon. Field investigations and wetland delineations were conducted between May 6 and May 10, 2002. Less than 0.5 acres of impact to wetlands associated with three intermittent creeks would occur as a result of the placement of culverts along the electric transmission line access road. A wetland delineation report was filed with the U.S. Army Corps of Engineers (Eugene, Oregon) and the Oregon Division of State Lands (Bend, Oregon) on August 22, 2003.

4.9 Farmlands

The Farmland Protection Policy Act (7 USC §4201 et seq.) directs Federal agencies to identify and quantify adverse impacts for Federal programs on farmlands. The Act's purpose is to minimize the number of Federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to nonagricultural uses. The Energy Facility site and the electric transmission line could permanently disturb up to 4.1 acres of land classified as high value soil. Impacts to these soil are described further in Section 3.2.

4.10 Recreation Resources

No public recreation occurs at the proposed locations of the Energy Facility site, water supply well and pipeline, electric transmission line, and natural gas pipeline. There are six potential recreational opportunities within a 5-mile radius of the Energy Facility: Bonanza City Park, Malin City Park, a primitive BLM campsite, a proposed BLM backcountry byway, a proposed BLM trail, and the Fremont National Forest. Construction and operation of the Energy Facility at distances of several miles from the identified recreational opportunities would not cause the direct or indirect loss of recreational use.

4.11 Global Warming

Emissions of carbon dioxide (CO_2) for the Energy Facility were estimated as a part of the demonstration of compliance with OAR 345-024-0560, as presented in Exhibit Y of the SCA as amended by Amendments No. 1 and No. 2, filed with EFSC on July 25, 2003, and October 15, 2003, respectively. The estimate of 0.51 million tons per year would exceed the CO_2 standard, thereby requiring offsets. This requirement would be met through the monetary path, in terms of a payment of over $13.6 million to The Climate Trust.

4.12 Permit for Structures in Navigable Waters

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) regulates work done in or structures placed below the ordinary high water mark of navigable water of the U.S. No work associated with the proposed Energy Facility would occur in such water bodies.

4.13 Permit for Discharges into Waters of the United States

Discharge of dredged or fill material into waters of the United States is regulated by the Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. The proposed Energy Facility would be located in an upland area. Although the electric transmission line would pass over water of the United States, it would not affect these features. Discharge of dredged or fill material into waters of the United States is not proposed by the project.

4.14 Permits for Right-of-Way on Public Lands

For the most part, the Energy Facility would be constructed on privately owned land. Sections of the water supply pipeline would cross irrigation canals, which would require consultation with the Langell Valley Irrigation District, but no new right-of-way permit. The electric transmission line would cross land managed by BLM. An application has been submitted to BLM for an easement.

4.15 Energy Conservation at Federal Facilities

The proposed project does not include the operation, maintenance, or retrofit of an existing Federal building or the construction or lease of a new Federal Building.

4.16 Pollution Control

Several pollution control acts would apply to the project, including:

- Clean Air Act
- Clean Water Act
- Resource Conservation and Recovery Act
- Toxics Substance Control Act
- Federal Insecticide, Fungicide, and Rodenticide Act

4.16.1 Air

Emissions produced by the proposed project must meet standards established by the Environmental Protection Agency. The Clean Air Act is the principal Federal law governing air pollution control. It was most recently amended in 1990. In the project area, authority for ensuring compliance with the provisions of the Clean Air Act is delegated to ODEQ. The Energy Facility would comply with applicable standards, as described in Section 3.7. ODEQ deemed the air permit application complete for the Facility on December 6, 2002.

4.16.2 Water

The Clean Water Act of 1977, as amended, is the principal Federal law governing water pollution control. The Act was most recently amended in 1987 and reauthorized in 1991. The Clean Water Act authorizes Federal and state regulations of discharges into waters of the United States and municipal sewer systems. The NPDES is the primary instrument for implementing the Act. ODEQ is authorized to administer the NPDES program within the state. An NPDES Stormwater Discharge Permit 1200-Z would not be required for plant

operation because stormwater would discharge to an infiltration basin and not to surface water at a point source. However, if the alternative of discharging the stormwater into the West Langell Valley Road side ditch is selected, an NPDES General Construction Permit 1200-C would be required.

An NPDES Stormwater Discharge General Permit for Construction is required to address erosion control for construction activity. The project proponent applied for this permit on September 5, 2002.

4.16.3 Solid and Hazardous Waste

During construction, solid waste generated at the Energy Facility would include scrap metals, cardboard, packing paper, wood, plastic, glass, and excess excavation materials. An estimated 350 tons would be generated each month. During operations, approximately 50 tons per year of solid waste would be generated at the site, including office waste, turbine air filters, metal and machine parts, and electrical materials. During both construction and operations, wastes would be recycled as much as feasible, and any nonrecyclable construction wastes would be collected in roll-off bins and transported to a landfill.

It is expected that special disposal permits would not be required during construction and that the proposed Energy Facility would not produce any solid wastes classified as "special wastes." The project would comply with Federal and state regulations dealing with the use, storage, and disposal of hazardous materials and hazardous wastes, including those covered under Division V of the 1991 Uniform Fire Code entitled "Stationary Tank Storage, Aboveground, Outside of Buildings."

4.16.4 Safe Drinking Water

The Safe Drinking Water Act (42 U.S.C. Section 200f et seq.) protects the quality of public drinking water and its source. During construction, drinking water would be bottled. During operations, drinking water would be supplied from the Babson well. The proposed Energy Facility would comply with state and local public drinking water regulations and would not degrade the quality of aquifers or jeopardize their usability as a drinking water source. The proposed Energy Facility would not affect any sole source aquifer or other critical aquifers, or adversely affect surface water supplies. Section 3.3 provides more information on water quality and hydrology.

4.16.5 Noise

The proposed project is subject to maximum allowable levels of noise by the state of Oregon (OAR 340-035-0035). Regular operation of the Energy Facility with mitigation as proposed would comply with noise standards for nearby sensitive receptors. Potential noise-related impacts of project construction and operation are discussed in Section 3.13.

4.16.6 Pesticides and Asbestos

The proposed project would not use or produce pesticides and would not distribute, use, or dispose of polychlorinated biphenyls (PCBs), although the landscaping conducted for the Energy Facility may include a small amount of pesticides.

Asbestos would not be used in the Facility.

4.16.7 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund, was enacted by Congress on December 11, 1980, and amended by the Superfund Amendments and Reauthorization Act (SARA) on October 17, 1986. CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites; provided for liability of persons responsible for releases of hazardous waste at these sites; and established a trust fund to provide for cleanup when no responsible party could be identified. The land on which the Energy Facility would be sited has been used as agricultural land, pasture land, and rangeland. Based on site visits and review of databases, the following observations were made:

- Waste and debris piles were not on the subject property.
- Stained soil were not on the subject property.
- No obvious hazardous substance use, storage, or disposal was on the subject property at the time of the site visit.
- No indications of groundwater or petroleum wells were identified during the site visit on the subject property.
- There were no buildings or evidence of foundations in the aerial photographs or identified during the site visit on the subject property.
- No uses of aboveground or underground tanks were indicated in the regulatory databases or observed at the subject property.
- The subject property was not listed in any regulatory databases checked.

4.16.8 Radon

There is no evidence to suggest that the sites of the Energy Facility and its supporting facilities are affected by regulations concerning radon gas or would be affected by the Radon Gas and Indoor Air Quality Research Act of 1986 (42 USC §7401).

4.17 Permits

Permits would be obtained from a number of agencies before Energy Facility construction and operation could begin. The following state and local permits would be required from the relevant agency:

- Energy Facility Site Certificate (EFSC)
- Onsite Sewage Disposal System Permit—Construction and Operation (ODEQ)
- Water Right Permit or Water Use Authorization (OWRD)
- Water Pollution Control Facility Permit (ODEQ)

- Performing Miscellaneous Operations upon a State Highway (ODOT)
- Oversize Load Movement Permit/Load Registration (ODOT)
- Air Contaminant Discharge Permit Including Prevention of Significant Deterioration Permit (ODEQ)
- Title V Operating Permit (ODEQ)
- Title IV Acid Rain Program (ODEQ)
- Construction Stormwater General and NPDES Permit 1200-C (ODEQ)
- Industrial Activities Stormwater General and NPDES Permit 1200-Z (ODEQ) if discharge is to the West Langell Valley Road side ditch
- Archaeological Artifacts Excavation Permit (SHPO)
- Hazardous Waste Generator Registration (ODEQ)
- Conditional Use Permit (Klamath County)
- Building Permits (Klamath County)

This list does not include Federal permits or permits pertaining to details of construction.